REMARKS

The Office Action dated December 16, 2002 has been received, its contents carefully noted, and the applied citations thoroughly studied. Accordingly, the foregoing revisions to the specification and claims are tendered with the conviction that patentable contrast has now been made manifest over the known prior art. Accordingly, all rejections tendered by the Examiner in the above-referenced Office Action are hereby respectfully traversed and reconsideration is respectfully requested.

It is believed that the foregoing revisions to the claims are within the metes and bounds of the recently articulated Supreme Court *Festo* case, in that all equivalents susceptible to capture have been retained in that one skilled in the art, at the time of this amendment, could not have reasonably be expected to have drafted a claim that would have literally encompassed any other equivalent.

The Examiner is invited to favorably receive formal drawings, submitted herewith.

The Examiner is invited to note the objections to the abstract have been attended to.

The revisions to the claims are intended to make explicit that which had been implicit heretofore and result in a favorable reception by the Examiner.

An interview is respectfully requested in the event the Examiner believes issues remain unresolved.

Rejections under 35 U.S.C. §102(b)

Claim 3 - now amended - had been rejected under 35 U.S.C. §102(b), a very high standard. With respect to rejections under 35 U.S.C. § 102, the Examiner is invited to

consider the following binding, compelling precedent articulated by the Court of Appeals for the Federal Circuit:

". . . anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference." *Akzo N.V. v. United States ITC*, 808 F.2d 1471, 1 U.S.P.Q.2d 1241 (Fed. Cir. 1986).

Further, "those elements must either be inherent or disclosed expressly . . ." *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987). ". . . and must be arranged as in the claim[s] . . ." *Carella v. Starlight Archery & Pro Line Co.*, 804 F.2d 135, 231 U.S.P.Q. 644 (Fed. Cir. 1986).

In addition, ". . . [the] absence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 U.S.P.Q. 81 (Fed. Cir. 1986).

Succinctly, Errico did not anticipate (inter alia) "fixing the rod and fasteners together". Note locking collar 150 of Errico. Anticipation is therefore not correct. However the claim has been amended for further, starker contrast.

Rejections under 35 U.S.C. §103(a)

It is Black Letter Law the Patent and Trademark Office's burden is to establish a prima facie case of non-obviousness. The Patent and Trademark Office has met its burden only when it fully describes: "1) What the reference discloses, teaches and suggests to one skilled in the art; 2) What the reference lacks in disclosing, teaching or suggesting vis-à-vis the claimed features; 3) What particular teaching or suggestion is being relied upon either via a reference itself or knowledge of person of ordinary skill in the art; 4) A statement explaining the proposed modification in order to establish the prima facie case of obviousness; and finally 5) the motivation behind the statement of

obviousness which comes from three sources: a) teachings of the prior art; b) nature of the problem to be solved; or c) knowledge of persons of ordinary skill in the art", *see In re Rouffet* 47 USPQ2d 1453 (Fed. Cir. 1998).

The Examiner has failed to meet these threshold requirements to establish prima facie obviousness. In the absence of such a prima facie showing, the Examiner's rejection cannot stand.

Undersigned fails to find motivation in the prior art to guide the Examiner in his combination of references. Consequently, the Examiner is engaging in impermissible hindsight.

While it is true Errico introduces boiler plate at col. 6, lines 31-38, in which shaft 126 may have designs perscribed by a physician, that is not the same as taking Ross' bone screw and grafting a rotating head thereon. And certainly nowhere - not even Jackson contemplates bone and thread engagement where the thread pattern induces radially inward forces as claimed.

Jackson merely addresses the set screw which is exterior of the bone and endeavors to solve the problem of set screw removal. In fact, Jackson's teaching comes from an imperfect understanding of applicant's earlier endeavors as evidenced by the citation of applicant's own patent 5,499,892 by the Examiner of the Jackson patent.

Jackson believes it necessary to torque the set screw until driving head 16 breaks away, requiring an "easy out" for set screw removal (Figure 5) because his entire patent focuses on the "easy out" extraction scheme.

Applicant, by contrast, recognizes the differences in the orthopedic environment, such that the free ends 138 (applicant's Figures 4 and 5) do not exhibit the same resistance to spreading and thus the set screw reflects this difference.

Consequently, the socket shown in Figure 5 (or the faceted necked down portion 113/end 114) of applicant is all that is required to offset the set screw forces engendered by (1) the set screw thread and (2) the abutment of the set screw against the cylindrical surface 122.

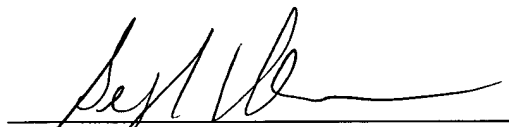
Only applicant, inter alia, connects the set screw directly to the rod and then directly to the bone screw. This reduces backlash and tolerance problems.

Only applicant, inter alia, provides two sets of thread patterns which compress axially and radially inward: the first set uses the cup and set screw threads, the second set uses the two thread sets on the bone screw.

In view of the foregoing, it is respectfully requested that the Examiner pass this case to issue. If, upon further consideration, the Examiner believes further issues remain outstanding or new ones have been generated, undersigned respectfully requests that the Examiner call undersigned to expeditiously resolve same.

Dated: June 16, 2003

Respectfully Submitted:



BERNHARD KRETEN
Applicant's Attorney
Telephone (916) 930-9700
Registration No.: 27,037